

)	In the Circuit Court of the
)	Ninth Judicial Circuit, in and for
)	Orange County, Florida
STATE OF FLORIDA)	
)	Case No.: 482008-CF-0015606-O
v.)	Division 16
)	
CASEY MARIE ANTHONY,)	Hon. Stan Strickland
)	
Defendant.)	
)	

**MOTION TO DECLARE FLORIDA STATUTES
§ 921.141(5)(I) UNCONSTITUTIONAL AND TO
PRECLUDE ITS USE IN THE PRESENT CASE**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel ANDREA D. LYON and JOSE A. BAEZ, and moves this Honorable Court to declare Fla. Stat. § 921.141(5)(I) unconstitutional and preclude its use in the instant case. As grounds, Miss Anthony states the following:

1. Florida's Death Penalty Statute requires a jury to weigh aggravating factors against mitigating factors before recommending a sentence of death or life in prison. Fla. Stat. § 921.141(2) provides:
 - (2) Advisory sentence by the jury.--After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:
 - (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
 - (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

2. Fla. Stat. § 921.141(5)(I) specifically sets out as an aggravating factor that:

The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

3. Florida's Standard Jury Instruction on the Cold, Calculating, and Premeditated (Hereinafter referred to as "CPP") aggravating circumstance state that:

The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

"Cold" means the murder was the product of calm and cool reflection.

"Calculated" means having a careful plan or prearranged design to commit murder.

A killing is "premeditated" if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant.

The premeditated intent to kill must be formed before the killing. However, in order for this aggravating circumstance to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

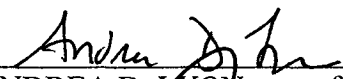
A "pretense of moral or legal justification" is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

In Re: Standard Jury Instructions in Criminal Cases – Report No. 2005-2, 2009 Fla. LEXIS 1806, 1840-41.

4. Florida's death penalty statute, and the aggravating circumstances enumerated therein, must be strictly construed. The requirement of strict construction is not only a matter of judicial prudence but is required by the defendant's due process rights, the eighth amendment and Florida statutory law. *Godfrey v. Georgia*, 446 U.S. 420, 433 (1980) (plurality opinion); *see also, Maynard v. Cartwright*, 486 U.S. 356, 362 (1988); Fla. Stat. § 775.021(1) ([t]he provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused).
5. The Florida Supreme Court has previously held that allowing Fla. Stat § 921.141(5)(I) "so vague as to leave the sentencer without sufficient guidance for determining the presence or absence of the factor." *Jackson v. State*, 648 So.2d 85, 90 (Fla. 1994). Accordingly, the court held that a jury instruction must be given to explain the statutory language whenever the state wished to pursue the death penalty.
6. The standard instruction does not eliminate the unconstitutionality of CCP. It merely provides synonyms for each of the terms which do not help to explain how it is to be applied to the facts of a given case.
7. An examination of the case law shows that the current instruction results in a number of conflicting outcomes (*See* accompanying memorandum of law). It therefore fails to narrow the circumstances under which the death sentence may be applied.

8. By allowing the existence of such an overbroad aggravator, a significant degree of discretion is interjected into the sentencing process. Capital sentences are therefore insufficiently narrowed, raising strong concerns about the constitutionality of the CCP aggravator as applied.
9. In the interest of protecting Miss Anthony's constitutional rights, the Defense request this Honorable Court to:
 - a. Order the State to file a response motion and memorandum of law within thirty days of the filing of this motion and accompanying memorandum of law;
 - b. Allow the defense ten business days from the State's filing of its responsive motion and memorandum of law to file a reply motion and memorandum of law;
 - c. Set a hearing date, at which time this Honorable Court may hear arguments relating to the defense and prosecution's motions, and
 - d. Declare Fla. Stat. § 921.141(5)(i) and/or the standard (5)(i) jury instruction unconstitutional and to preclude their use in the case at bar,

Respectfully submitted,



ANDREA D. LYON, one of the attorneys
for CASEY MARIE ANTHONY.



JOSE A. BAEZ, one of the attorneys
for CASEY MARIE ANTHONY.

Dated: 11/25, 2009

Professor Andrea D. Lyon
Director, Center for Justice in Capital Cases
DePaul University College of Law
14 E. Jackson Blvd., First Floor
(Mailing address 1 E. Jackson Blvd.)
Chicago, Illinois 60604
312-362-8402 (phone)
312-362-6918 (fax)

Jose A. Baez
The Baez Law Firm
522 Simpson Road
Kissimmee, Florida 34744
407-705-2626 (phone)
407-705-2625 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and /or U.S. Mail on this 25 day of November, 2009.



JOSE A. BAEZ, ESQUIRE
FL Bar No.: 0015232
JOSE L. GARCIA, ESQUIRE
FL Bar No.: 0026020
THE BAEZ LAW FIRM
522 Simpson Road
Kissimmee, Florida 34744
Tel.: (407) 705-2626
Fax: (407) 705-2625

STATE OF FLORIDA

v.

CASEY MARIE ANTHONY,

Defendant.

) In the Circuit Court of the
) Ninth Judicial Circuit, in and for
) Orange County, Florida
)
) Case No.: 482008-CF-0015606-O
) Division 16
)
) Hon. Stan Strickland
)
)
)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DECLARE
 FLORIDA STATUTES § 921.141(5)(I) UNCONSTITUTIONAL
 AND TO PRECLUDE ITS USE IN THE PRESENT CASE**

INTRODUCTION

This memorandum is submitted in support of the CASEY MARIE ANTHONY’s motion to declare Florida Statutes § 921.141(5)(I) unconstitutional and preclude its use in the case against her. Miss Anthony is accused of first degree murder and the prosecution has asked the court to impose a capital sentence. Before a jury can recommend a capital sentence, it must find that at least one of the fifteen aggravating circumstances listed at 921.141(5) exists. To date, the prosecution has not made it known which aggravating circumstance it intends to pursue. It is Miss Anthony’s position that the "cold, calculated, premeditated" [hereinafter referred to as “CCP”] circumstance at Fla. Stat. § 921.141 (5)(I) is unconstitutional, it is not rendered constitutional by the current jury instruction, and it has never been capable of consistent and constitutional application by the courts. She therefore requests that the court preclude its application in this case.

STATEMENT OF FACTS

Caylee Marie Anthony was reported missing to law enforcement officials on July 15, 2008. On October 14, 2008, Casey Marie Anthony [hereinafter "Miss Anthony"] was arrested and indicted for the charges of first degree murder (capital), aggravated child abuse, aggravated manslaughter of a child, and four counts of providing false information to a law enforcement officer on October 14, 2008. After declining to seek the death penalty on December 5, 2008, the State filed a "Notice of Intent To Seek The Death Penalty," pursuant to Fl. Stat. § 921.141 on April 13, 2009.

ARGUMENT

It is constitutionally required that aggravating circumstances must genuinely narrow the class of people eligible for the death penalty. *See, e.g., Maynard v. Cartwright*, 486 U.S. 356 (1988). The CCP aggravator does not comply with this requirement because it is vague and circular. In *Jackson v. State*, 648 So.2d 85, 90 (Fla. 1994) Florida's Supreme Court recognized that the statute was too "susceptible of misinterpretation...to sufficiently inform the jury of the nature of this aggravator." It was so lacking in clarity that it was theoretically possible for the jury to characterize *all* murders as CCP, and thus, the court held, a clarifying jury instruction was required. *Id.* Miss Anthony's position is that CCP is still unconstitutionally overbroad and ambiguous because the current standard instruction is inadequate. Because it only provides synonyms for an already circular proposition, it reinforces the problem instead of resolving it. Previous jury instructions, although consistent with *Jackson*, have not had a meaningfully narrowing effect at trial, and the higher courts have failed to apply the rule with sufficient consistency to put the defendant on notice of the charges against her. Since all previous attempts

to apply CCP constitutionally have failed, Miss Anthony requests that the court declare it unconstitutional and preclude its use in the present case.

I. Aggravating Circumstances Must Genuinely Narrow the Class of People Eligible for the Death Penalty

1. The Eighth Amendment

The Eighth Amendment of the United States Constitution and Article 1, Section 17 of the Florida Constitution prohibits the infliction of “cruel and unusual punishment.” U.S. Const. amend. VIII; Fla. Const. art. 1 § 17. The Supreme Court has interpreted this to mean that aggravating circumstances must be sufficiently clear for to guide the jury towards making a principled distinction between those who deserve the death penalty and those who do not, *Godfrey v. Georgia*, 446 U.S. 420, 433 (1980) (plurality opinion). *See also, Maynard v. Cartwright*, 486 U.S. at 362 (“[t]he channeling and limiting of the sentencer's discretion in imposing the death penalty is a fundamental constitutional requirement for sufficiently minimizing the risk of wholly arbitrary and capricious action.”) The concern is that absent some meaningful benchmarks, death sentences may be meted out at juries’ “unfettered discretion.” *Id.* at 364.

In *Maynard v. Cartwright*, the Court held that the “especially heinous, atrocious, or cruel” [hereinafter HAC] aggravating circumstance at issue in that case was unconstitutionally vague on its face and as applied because the court had failed to remedy the statutory deficiency by providing a suitably narrow construction. *Id.* Miss Anthony submits that the HAC and CCP suffer from the essentially the same defects and that the jury instructions do not provide the jury with guidance that would help meaningfully narrow the class of persons who are eligible for a sentence of death. For a fuller discussion, *see* Def.’s Memorandum of Law in Support of Motion

to Declare Fla. Stat. § 921.141(5)(H) And/Or the Standard 5(h) Jury Instruction Unconstitutional Facially and as Applied.

2. Due Process

The Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and Article 1, Section 9 of the Florida Constitution, provide that the State shall not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. V; U.S. Const. amend. XIV § 1; Fla. Const. art. 1 § 9. In cases where the defendant's life is at stake, heightened standards of due process apply. *Gregg v. Georgia*, 428 U.S. 153, 187, (1976).

Due process requires that statutory language must be strictly construed so that the defendant is truly on notice of the charges against her:

The practice of a court's resolving questions concerning the ambit of a criminal statute in favor of lenity does not merely reflect a convenient maxim of statutory construction, but rather, is rooted in fundamental principles of due process, which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited; thus, to insure that the legislature speaks with special clarity when marking the boundaries of criminal conduct, courts must decline to impose punishment for actions that are not plainly and unmistakably proscribed.

Dunn v. United States, 442 U.S. 100, 112, (1979). Florida extends this principle specifically to aggravating circumstances in capital sentencing schemes. See *Carpenter v. State*, 785 So. 2d 1182 (2001) (holding that a prior gross misdemeanor conviction in Nebraska was not equivalent to a prior felony conviction in Florida even though it might have been classed as a felony in Florida). The statutory embodiment of this principle reads:

The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused. Fla. Stat. § 775.021(1).

As it relates to 921.141(5)(I), this means that the defendant is entitled to a strong presumption of ordinary premeditation, as opposed to a heightened form. The jury instructions fail to make this clear, as explained below.

II. Florida's Capital Sentencing Scheme Does Not Provide Adequate Guidelines for the Cruel, Calculated and Premeditated Circumstance.

A. The Statutory Language at Fla. Stat. § 921.141(5)(I) and the Current Jury Instruction.

A constitutional capital sentencing scheme must ensure that each situation in which a capital sentence is recommended is distinguishable "from the many cases in which it is not." *Godfrey v. Georgia*, 446 U.S. 420, (1980) (plurality opinion). The statutory guidelines at Fla. Stat. § 921.141 were created to uphold this constitutional principle. Under that scheme, only if one or more of the fifteen "aggravating circumstances" exists, and the aggravating circumstance(s) are not outweighed by any mitigating circumstance, may the jury recommend a capital sentence for the defendant.

The CCP circumstance is found at section (5)(I) of the statute, and reads:

The capital felony was a homicide and was committed in a cold, calculating and premeditated manner without any pretense of moral or legal justification.

Fla. Stat. § 921.141(5)(I). The statutory language has already been found deficient as a means of guiding jury discretion:

Florida's standard CCP jury instruction suffers the same constitutional infirmity as the HAC-type instructions which the United States Supreme Court found lacking in *Espinosa*, *Maynard*, and *Godfrey* -- the description of the CCP aggravator is "so vague as to leave the sentencer without sufficient guidance for determining the presence or absence of the factor."

Jackson, 648 So.2d at 90. The court in *Jackson* provided a placeholder instruction to cure the constitutional defects. It is substantially the same as the standard jury instruction now employed,

except for the explanation of “premeditated” which is now longer but more ambiguous than it was in *Jackson* (see *infra*). The standard jury instruction now reads:

The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

“Cold” means the murder was the product of calm and cool reflection.

“Calculated” means having a careful plan or prearranged design to commit murder.

A killing is “premeditated” if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant.

The premeditated intent to kill must be formed before the killing. However, in order for this aggravating circumstance to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

A “pretense of moral or legal justification” is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

In Re: Standard Jury Instructions in Criminal Cases – Report No. 2005-2, 2009 Fla. LEXIS 1806, 40-41. Miss Anthony’s position is that the instruction does not overcome the constitutional infirmities recognized in *Jackson*. The defect the Supreme Court of Florida found was found the degree of subjectivity involved in making a CCP determination. 648 So.2d at 89. Instead of providing the jurors with guidance, the court below had instructed the jury to arrive at a conclusion based on their “ordinary sensibility.” *Id.* But the current instruction does nothing to alleviate this problem: it explains cold as cool; calculated as plan or design; premeditated as the

product of a conscious decision to kill involving a substantial period of reflection. The instruction in *Jackson* was actually more effective because it explained that “premeditated” means that “the defendant exhibited a higher degree of premeditation than that which is normally required in a premeditated murder.” *Id.* At 90. Using first degree murder as a benchmark provide a more intelligible and objective standard. The present instruction, however, does not contain this language and as a result is even more ambiguous.

In conclusion, it is Miss Anthony’s position that the CCP jury instruction is constitutionally deficient. By using synonyms, the instruction reinforces the misunderstanding that the sentencer is supposed to bring only its common sense to bear on the issue, when in reality, CCP is supposed to reflect an objective legal standard. These words have a special significance when used in legal proceedings, and if the court refuses to declare it unconstitutional then this must at least be acknowledged and made explicit to the jury.

III. The CCP aggravator is demonstrably unconstitutional because it has no narrowing effect.

Far from providing a narrowing effect, the CCP aggravator has a scattergun effect on persons for whom the state seeks for the death penalty. Miss Anthony’s position is that the CCP aggravator is demonstrably unconstitutional because it is impossible to discern a predictable rule from the wildly divergent case law it has produced. As such, it fails to put the defendant on notice of the accusations which might be made against her.

The *Jackson* court noted that one of the principal problems with CCP as it was previously construed was that “without the benefit of an explanation that some 'heightened' form of premeditation is required to find CCP, a jury may automatically characterize every premeditated murder as involving the CCP aggravator.” 648 So.2d at 90. This would violate the defendant’s

constitutional due process rights, and Florida's criminal statute, which both require the circumstance to be construed strictly in her favor. See *Trotter v. State*, 576 So. 2d 691, 694 (Fla. 1990). The CCP standard jury instruction is supposed to cure that problem by meaningfully narrowing the class of persons eligible for death, but it has failed to do.

This section provides three examples of where the courts have failed to provide clear guidelines in the application of the CCP aggravator: (i) the courts provide no guidance for when intent sufficient for "premeditation" must be formed, (ii) they waiver unconstitutionally on whether kidnapping is indicative of a calculated plan, (iii) they fail to clarify the role of transferred intent in the CCP analysis. It will be shown that the CCP aggravator, as it has been construed, is too broad and ambiguous to provide an effective way of narrowing the class of death eligible individuals, or to put the defendant on notice of whether it applies to her.

i. Intent Formed During the Commission of a Crime

The CCP aggravator is not supposed to apply to crimes that begin as a felony and result "in a situation simply getting out of hand" *Bates v. State*, 465 So.2d 490, 493 (Fla. 1985). Indeed, a separate aggravator covers precisely such situations. Fla. Stat. § 921.141 (5)(D) (felony murder aggravator). As early as 1987, in *Rogers v. State*, 511 So. 2d 526, 533 (Fla. 1987), the court overruled a CCP finding in a typical felony murder case where the defendant shot a store clerk during the course of a robbery after he made an apparently threatening move. *Rogers*, 511 So. 2d at 533, (overruling *Herring v. State*, 446 So. 2d 1049, 1051-52 (Fla.), *cert. denied*, 469 U.S. 989 (1984) on the grounds that the murder was not the result a careful plan or prearranged design *Rogers*, 511 So. 2d at 533.)

Rogers has been the law since 1987, and continues to be to date. In fact, language from the current jury instruction is identical to language in *Rogers* ("calculation consists of a careful

plan or prearranged design”). In spite of this, courts continue to apply the aggravator in cases where the facts are at least equally, if not more consistent with ordinary first degree murder. In *Foster v. State*, 654 So. 2d 112, 115 (Fla. 1995) the defendant and two female associates planned to “make some money” by having one of the woman have sex with the victim. *Foster*, 369 So. 2d at 929 (Fla. 1979) (*aff’d* 654 So. 2d 112 (Fla. 1995)). Having arrived at the intended location, the defendant became irate and cut the victim’s jugular. They dragged the victim to into some bushes to hide the body but when the defendant realized he wasn’t dead. He cut the victims spinal chord. *Id.* In that case, the defendant confessed to first degree murder, stating that “it was premeditated and I intended to kill him.” *Id.* He did *not*, however, confess to CCP although the sentencer determined it to exist, and CCP was upheld on appeal.

The *Jackson* court ordered a detailed CCP instruction because the statute was “too susceptible of misinterpretation.” Section 775.021(1) of Florida Statutes states that when a statute is susceptible of differing constructions, “it shall be construed most favorably to the accused.” The *Foster* court violated that principle when it upheld the CCP finding against Foster because the evidence is equally, if not more, consistent with ordinary first degree murder. The law is required to be construed in the defendant’s favor, and in this case the court should have found CCP did not apply.

When one compares *Foster* with *Almeida*, 748 So. 2d 922, 932 (Fla. 1999), the *Foster* holding becomes even more confusing. In *Almeida*, the defendant was severely embarrassed by a restaurant manager who refused to serve him alcohol. He left the premises and returned later to shoot and kill the manager. *Id.* CCP was not upheld.

Unlike *Foster*, where the situation escalated in seconds, in *Almeida*, the defendant went away for a period of hours, and returned with the sole intention of shooting the manager. If one

of these demonstrates a careful plan, it is certainly not the one where CCP was actually upheld. These inconsistent holding are an illustration of the unconstitutionality of the CCP aggravator.

ii. Removing Victim to Remote Location

In another illustration of the constitutional intractability of this aggravator, the facts of the following cases are strikingly similar and yet the court arrived at opposite conclusions. In *Preston v. State*, 444 So. 2d 939, 941 (Fla. 1984), *aff'd* 970 So. 2d 789 (Fla. 2007) the victim was found one-and-a-half miles away from where she was abducted, her body was mutilated and almost decapitated. The court held that there was not sufficient evidence of heightened premeditation, as required for CCP. *Id.* at 947.

In *Parker v. State*, 873 So. 2d 270, 289 (Fla. 2004) the court upheld CCP when the defendants took the female clerk from the store, and her body was found shot and stabbed thirteen miles away. *See also, Foster*, 369 So. 2d at 929 (victim dragged under nearby bush; CCP upheld). The opposing outcomes of such similar cases show that the CCP aggravator is failing to channel decisions, contrary to its purpose.

iii. Transferred Intent

The jury instruction fails to address the dispute in the case law as to whether the perpetrator's heightened premeditation must be directed specifically towards to the victim or whether it may be transferred to a third party. The following line of cases illustrates this constitutional confusion CCP creates.

In *Amoros v. State*, 531 So. 2d 1256, 1257 (Fla. 1988), the defendant threatened to kill his ex-girlfriend when she wouldn't tell him who owned the new car she was driving. She was scared and decided to report the threat to the police but while she was doing so, the defendant went to her house where he found and killed her present boyfriend. *Id.* The court held that he

CCP aggravator was inapplicable because the defendant's threat was directed to his ex-girlfriend, not her boyfriend. *Id.* at 1260.

In *Diaz v. State*, 860 So. 2d 960, 963 (Fla. 2003), the defendant wrote a letter to his brother saying that he was going to confront his ex-girlfriend and apologizing for what he thought would be the likely outcome: murder. When he arrived at her house, he shot his ex-girlfriend who managed to escape. *Id.* At 964. He then began arguing with her father and eventually shot and killed him. *Id.* At 965. CCP was upheld. *Id.* at 969. See also, *Provenzano v. State*, 497 So. 2d 1177, 1183 (Fla. 1986), (the court upheld CCP where defendant shot a bailiff who came out of a courtroom while he was waiting for an opportunity to kill two other specified officers.”)

The *Diaz* court distinguished that case from *Amoros* on the following grounds. First, the court noted that *Amoros* did not know the victim resided there but *Diaz* did. 860 So. 2d at 970. Second, *Amoros* killed his victim more quickly than in *Diaz*, showing that *Diaz* had more time to plan. *Id.* Third, the only evidence of *Amoros*'s plan was the threat he made to his ex-girlfriend, *id.*, whereas *Diaz* had told a third party, showing that his plan was somehow more calculated.

These distinctions do not speak to whether the defendant's acts were cold, calculated or premeditated: first, *Diaz*'s knowledge of the victim only shows that harm to the victim was foreseeable, not that the harm to the victim was premeditated. Foreseeability of the victim's presence is necessary but far from sufficient for a premeditated murder. Second, the time lag between *Diaz*'s arrival and the killing was not used to form a careful, calculated plan. *Diaz*'s “plan” went by the wayside when his intended victim fled the scene, and the ensuing acts must be interpreted in light of this. Third, telling the victim as opposed to a third party might indicate a difference in the defendant's level of intent in some cases, but in these cases it made no

a difference in the defendant's level of intent in some cases, but in these cases it made no difference. Both defendants followed through on their stated intent. Furthermore, Amoros's ex-girlfriend believed the threat was serious enough to report it to the police.

It is impossible to discern any meaningful distinctions between cases where the defendant was sentenced to death and cases where the defendant was shown mercy. CCP does not put the defendant on notice of the charges against her and as should be declared unconstitutional and its use precluded in the case against Miss Anthony.

CONCLUSION

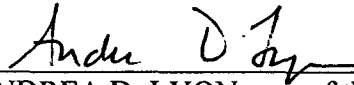
Fla. Stat. § 921.141 (5)(I) is unconstitutional. It is clear that the standard instruction cannot heal the inconsistencies and unconstitutional infirmities in the case law, that there remain no clear dividing lines between death and non-death cases and that the sentencer's discretion remains unconstitutionally open-ended.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests this Honorable Court to:

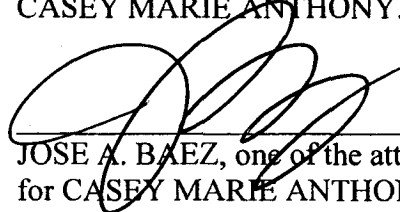
- a. Order the State to file a response motion and memorandum of law within thirty days of the filing of this motion and accompanying memorandum of law;
- b. Allow the defense ten business days from the State's filing of its responsive motion and memorandum of law to file a reply motion and memorandum of law;

- c. Set a hearing date, at which time this Honorable Court may hear arguments relating to the defense and prosecution's motions, and
- d. Declare Fla. Stat. § 921.141(5)(i) and/or the standard (5)(i) jury instruction unconstitutional and to preclude their use in the case at bar,

Respectfully submitted,



ANDREA D. LYON, one of the attorneys for
CASEY MARIE ANTHONY.



JOSE A. BAEZ, one of the attorneys
for CASEY MARIE ANTHONY.

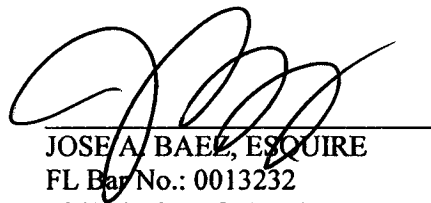
Dated: 11/25, 2009

Professor Andrea D. Lyon
Director, Center for Justice in Capital Cases
DePaul University College of Law
14 E. Jackson Blvd. First Floor
Chicago, Illinois 60604
312-362-8402 (phone)
312-362-6918 (fax)

Jose A. Baez
The Baez Law Firm
522 Simpson Road
Kissimmee, Florida 34744
407-705-2626 (phone)
407-705-2625 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and /or U.S. Mail on this 25 day of November, 2009.



JOSE A. BAEZ, ESQUIRE
FL Bar No.: 0013232
JOSE L. GARCIA, ESQUIRE
FL Bar No.: 0026020
THE BAEZ LAW FIRM
522 Simpson Road
Kissimmee, Florida 34744
Tel.: (407) 705-2626
Fax: (407) 705-2625